



COLLIN COUNTY

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Date: June 14, 2013
To: Judge Self and Commissioner's Court
From: Jon Kleinheksel, Director of Public Works 
Re: Adoption of Row Obstruction Policy

In the course of pursuing the Department's 50 Miles per Year program, Public Works has encountered many challenges utilizing and maintaining the County's prescriptive right-of-way for the purpose of road and drainage improvements. One such challenge spawned a Commissioners Court order in summer 2010 addressing trees and vegetation in the ROW after a landowner commenced a bitter public relations and legal campaign to stop Public Works from removing trees and vegetation in the prescriptive ROW which abutted his property.

With respect to obstructions in the Right-Of-Way, Public Works has historically confronted these events individually. This approach has required a significant amount of staff time meeting and negotiating with the landowner to remove the obstruction(s). Unfortunately, not all landowners are amenable and receptive to the County's improvement projects.

For example, PW is prepared to begin construction on CR398 with the full support of travelers, the elementary school, and all residents except for one of the abutting landowners. This landowner has inhibited and stymied the project despite our multiple attempts to placate and reach out to him. The landowner even erected a new fence last week over our drainage apparatus; in violation of the County's duty to maintain such area free from obstructions as is set forth in the Texas Transportation Code. The County's duty to remove such obstructions is reiterated in opinions by Texas AG Greg Abbott that our legal counsel has furnished to us.

PW has received numerous phone calls and correspondence from residents and parents of the schoolchildren imploring us to upgrade the road due to significant safety concerns. The rock road provides a less stable surface and greater braking distances than its asphalt counterpart. In addition, travelers have complained of the dangerously narrow conditions on the west end as a result of the opposing tree lines. It is clear to Public Works that the vegetation and fencing in the prescriptive Right-of-Way needs to be removed for purposes of public health and safety, but there is a prospect that the affected landowner will commence legal action or a public relations campaign to stop us. Our legal counsel advised that findings of fact, made by Commissioners Court in

support of Public Works' position that the vegetation and fencing in the prescriptive Right-of-Way creates a threat to public health and safety would be very helpful to the County in the event of a lawsuit by an affected landowner. Public Works cannot itself make such declarations on the County's behalf.

In an effort to consolidate these activities into a single uniform practice, Public Works commissioned our legal counsel to draft an Order of the Commissioners Court addressing the Right-of-Way obstructions along CR398 supported by the full weight of the Texas Transportation Code (see attached). This order would mandate the removal of any obstruction from the Right-of-Way along CR398 and eliminate the need for laborious and time consuming meetings and negotiations with affected landowners. Similar Orders will be to the Commissioners for consideration and approval from time to time as is necessary when dealing with other recalcitrant landowners.

However, this Order does not absolve Public Works from performing our due diligence. PW staff will communicate with landowners and attempt to resolve these discrepancies amicably before invoking the new policy. PW pledges the judicious use of this policy and will apprise the Court of our intent to invoke it. PW staff requests Commissioners' Court consideration and approval to adopt the ROW Obstruction Order pertaining to CR 398. Photos of the obstruction and letters of support attached.